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One of the questions decided by the Texas Court of Criminal Appeals in King v. State is exceedingly close, as evidenced by the strong dissenting opinion of one of the judges. The holding of the court was that one whose signature to a note was forged was a married woman, incapable of making a valid note, was no defense to a prosecution for the forgery, where there was nothing on the note to show that the one by whom it purported to be made was a married woman, since the want of validity must appear on the face of a forged instrument, to relieve it of its forged character. The court cites ample authority seemingly sustaining this conclusion. But the dissenting judge, while admitting this to be good law, as applicable to forgery at common law, contends that it is not applicable to the offense under the statute, and therein he says lies the difficulty. He shows that there is a radical difference between the definition of forgery at common law and that laid by the statute. At common law the instrument to be the subject of forgery was required to be of apparent legal efficacy to affect property, while the statute requires that it must be such an instrument as, if genuine, would actually create legal liability.

The case of Ebner v. Mackey, recently, decided by the Supreme Court of Illinois, has been mildly criticised by some of the legal journals, the substance of which is that the court stated too broadly the rule that a physician is himself the proper judge of the necessary frequency of his visits to a patient. The claim, in that case, was by a physician for professional services rendered a decedent and his wife. The jury were instructed, "as a matter of law, that the physician attending a patient is the proper and sole judge of the necessary frequency of the visits to his patient, so long as the patient is in his charge; and in an action for his services a physician is not required, under the law, to prove the necessity of his making the number of visits that he makes, and for which he is seeking compensation." The supreme court, in affirming the judgment in favor of the physician, approved of and adopted the following language of the appellate court:

"Where a physician is called by a party to treat him or his wife, and he takes charge of the case and attends him from day to day, evidently in view of his responsibility for skillful and proper treatment, he must in the first instance, determine how often he ought to visit the patient; and so long as the party employing him accepts his services, and does not discharge him or require him to come less frequently, or fix the times when he wishes him to attend, he cannot afterwards be heard to say the physician came oftener than was necessary. There was no proof that claimant came when he was forbidden to come, or that he was discharged and continued to attend thereafter. Deceased and his wife called claimant and accepted his services without question." The *New York Law Journal* in commenting upon this case very reasonably says: "It is probable that the actual decision in this case was correct, as it does not appear from the record that there was any affirmative proof offered that the plaintiff made unnecessary visits. Nevertheless, in our opinion, the court overstates the doctrine that applies. Undoubtedly the physician himself is 'in the first instance' the proper one to determine how often he ought to visit the patient, but exception may be taken to the statement that the patient 'cannot afterwards be heard to say the physician came oftener than was necessary.' The court cites Wood on Master and Servant (sec. 177), where it is said: 'A physician is to be deemed the proper judge of the necessity of frequent visits to his patient, and the court will presume that all the professional visits made by him were necessary. Hence, in an action for his services he is not called upon to prove the necessity of making the number of visits that he did.' Mr. Wood cites as his only authority upon this proposition Todd v. Myres, 40 Cal. 357, where the following language is employed: 'Having been thus employed, the plaintiff was the best and the proper judge of the necessity of frequent visits, and in the absence of proof to the contrary, the court will presume that all the professional visits made were deemed necessary, and were properly made.' The doctrine of the text writer and the last cited

case, seems sound and just, but this is a different thing from saying generally that the patient cannot afterwards be heard to question the necessity of some of the physician's visits. The patient, of course, trusts to the integrity as well as the skill of the physician; necessarily the latter must, in the first instance, determine how frequent his visits should be, and it is not improper to presume in his favor on such point. But if the patient afterwards learn, and is able to show by satisfactory evidence, that the ailment for which the physician was called was only a slight one, and the physician exaggerated its seriousness and ran up a big bill for unnecessary visits, obviously it would be an injustice to preclude a defense based upon such facts."

NOTES OF IMPORTANT DECISIONS.

CRIMINAL LAW—CONFESSION — SUBSEQUENT PROSECUTION — FORMER CONVICTION.—In De Bord v. People, 61 Pac. Rep. 599, decided by the Supreme Court of Colorado, it was held under the statute law of that State providing that if one accused of an assault confess himself guilty he shall be punished as in other cases, that, where one who has committed an assault goes before a justice of the peace, swears to a complaint against himself, is convicted on his own evidence and assessed less than the maximum punishment for such offense, he cannot plead such proceeding in bar of a subsequent prosecution for the same offense instituted on complaint of the person assaulted, though on the trial of the latter action he is not assessed a greater punishment than in the first proceeding. The court said:

"There is only one question in the case, and that is whether a defendant may voluntarily go before a justice of the peace, swear to a complaint charging himself with an assault, confess himself guilty—the justice hearing only the evidence of the defendant himself—and thereafter successfully plead a judgment against himself, rendered in such a proceeding, as a bar to a subsequent prosecution for the same offense by the duly authorized representative of the people in a court of competent jurisdiction. It is the contention of the plaintiff in error that since he was fined by the justice of the peace, before whom he voluntarily went, the same amount that was imposed by the county court at the trial in which the district attorney appeared, no fraud was committed, and the law was vindicated. It has been held, where there was a statute so providing, that one accused of a small offense might voluntarily go before a court having jurisdiction, and confess himself guilty, and that the judgment imposed in such a case would be a bar to a subsequent prosecution for the same offense. But even there the statute was strictly construed, so as to minimize the chances for perpetrating fraud. We have no such statute. Section 2768, Mills' Ann. St. (sec. 2044, Gen. St. 1883) provides that, if any person accused of assault or assault and battery shall confess himself guilty, the jury, or, if a jury be waived, the justice, shall hear evidence and assess a fine, and the justice shall enter a judgment and issue execution, subject to appeal, as in other cases. This, however, means that the accusation shall be made, not by the defendant himself, or someone acting in his behalf, but by some disinterested person. To countenance such a practice as the defendant insists is proper would furnish to any defendant the means of escaping, in whole or in part, the punishment which his offense merits, and enable him to make a travesty of criminal prosecutions. Mr. Bishop, in volume 1 of his New Criminal Law, at section 1010, thus states the rule: 'If one procures himself to be prosecuted for an offense which he has committed, thinking to get off with a slight punishment and to bar a real prosecution in the future —if the proceeding is really managed by himself, either directly or through the agency of another —he is, while thus holding his fate in his own hand, in no jeopardy. The plaintiff State is no party in fact, but only such in name. The judge, indeed, is imposed upon, yet, in point of law, adjudicates nothing. "All was a mere puppet show, and every wire moved by the offender himself." The judgment, therefore, is a nullity, and is no bar to a real prosecution.' There are authorities which hold that, if the legal penalty is an exact one—for example, a fine of a fixed sum, or imprisonment for a certain term—and the person carrying on the cause against himself has borne it in full, not merely in part, the State thereby has suffered nothing, and the judgment would not be deemed fraudulent. This exception, if it be sound (as to which we express no opinion), is not applicable to this case, for the penalty for assault, under our statute, is imprisonment in the county jail for a term not exceeding six months or a fine not exceeding $100. Many authorities might be cited in support of the conclusion reached, some of which are State v. Little, 1 N. H. 257; Watkins v. State, 68 Ind. 427; Gresley v. State, 123 Ind. 72, 24 N. E. Rep. 332; Shideler v. State, 129 Ind. 523, 28 N. E. Rep. 537, 29 N. E. Rep. 36; Com. v. Alderman, 4 Mass. 477; Com. v. Dascom, 111 Mass. 404; Bradley v. State, 32 Ark. 722; McFarland v. State, 68 Wis. 400, 32 N. W. Rep. 226; State v. Simpson, 28 Minn. 66, 9 N. W. Rep. 78; Drake v. State, 68 Ala. 510; State v. Smith (Kan. Sup.), 47 Pac. Rep. 541; State v. Atkinson, 9 Humph. 677; State v. Colvin, 11 Humph. 599; State v. Epps, 4 Sneed, 522; State v. Green, 16 Iowa, 239; Com. v. Jackson, 2 Va. Cas. 501; Clark's Cr. Proc. 393; DeHaven v. State, 2 Ind. App. 376, 28 N. E. Rep. 562."

WILL — EXECUTION — SUFFICIENCY. — In Cunningham v. Cunningham, 83 N. W. Rep. 58, decided by the Supreme Court of Minnesota, it appeared that C duly signed an instrument intended to be his last will and testament, two physicians being present at his request to attest as witnesses. C was then sitting on the side of his bed, the paper lying on a book in front of him, the book being upon a chair. One of the physicians took the paper and both stepped through a doorway into an adjoining room and affixed their signatures, at a table which stood ten feet from the testator. He could have seen the table by stepping forward two or three feet, but did not do so. The attestation consumed not to exceed two minutes of time. The witnesses returned to the testator; their signatures were pointed out to him; he took the the paper into his own hands, looked it over and pronounced it "all right." It was held that Gen. St. 1894 (sec. 4426) of Minnesota, which requires that wills must be attested and subscribed by the witnesses in the "presence" of the testator, was sufficiently complied with. The court said in part:

"Some years ago a large number of American and English cases were collected in a note appended to Manderville v. Parker, 31 N. J. Eq. 242, and an examination thereof will show the absurd and inconsistent positions in which the courts have frequently placed themselves. As will be seen from the facts surrounding the cases mentioned in this note, or cited in the text books in support of this rule, it has been held almost universally that an attestation in the same room with the testator is good, without regard to intervening objects which might or did intercept the view; and also that an attestation outside the room or place where the testator sat or lay is valid if actually within his range of vision. And no court seems to have doubted that a man unable to see at all could properly make a will under the statute, if the witnesses attested within his 'conscious' presence, whatever that means. Exactly why or how an exception in the case of one temporarily or permanently blind can be injected into this statute has not been attempted by any court or writer, so far as we know. Nor has there been any success in the effort to show why one kind of an intervening object—a partition wall, for instance—is better calculated to afford an opportunity for the perpetration of a fraud upon the testator than is another kind, say the closed curtains of an old-fashioned bed, or the head or footboard of a bedstead, or any other article of furniture which happens to be an obstruction to the sight. Again, it is difficult to see what sound distinction can be made, when applying the rule, between a case where the testator can see the witnesses attest, if he chooses to lean his body forward a few inches, and the case where the act can be seen if he steps forward the same distance. Or, take a case where a testator has been injured, and is compelled to lie on his back with his eyes fixed on the ceiling. Must the witnesses affix their signatures from an elevation in order to sign in his presence? No case has gone that far and yet what difference would it make with such a testator in fact or in sound reason if the will was attested ten feet distant, on a table in an adjoining room or on a table the same distance from the bed, but in the same room? Take the case at bar. The testator sat on the edge of his bed when the witnesses signed at the table in the adjoining room, a few feet distant and within easy sound of his voice. If he could have seen them by leaning forward, the authorities in favor of upholding the will are abundant. Physically he was capable of stepping two or three feet forwrad, and from this point the witnesses would have been within his range of vision. It is extremely difficult to distinguish between the two cases, and yet it has been done again and again in applying the rule. We might continue these suggestions and queries as has been done quite frequently by courts which have not been entirely satisfied with a very rigid construction of the statute, and have not hesitated to say so; but it seems unnecessary, for there is one feature in these findings of fact which is sufficient, in our judgment, to warrant an affirmance, although there are many decisions to the contrary. As before stated the court found that the witnessing of the will consumed not more than two minutes, and that immediately thereafter Dr. Adams returned to the testator while Dr. Dugan came to the doorway, not over five feet distant, whereupon the former 'showed the signatures of the witnesses to the testator. The latter took the will, looked it over, and said in effect that it was all right.' To say that this was not a sufficient attestation within a statute which requires such attestation to be in the 'presence' of the testator, simply because the witnesses actually signed a few feet out of the range of his vision, is to be extremely technical without the slightest reason for being so. The signing was within the sound of the testator's voice; he knew what was being done; the act occupied not more than two minutes; the witnesses returned at once to the testator; their signatures were pointed out to him; he took the instrument into his own hands, looked it over and pronounced it satisfactory. The whole affair, from the time he signed the will himself down to and including his expression of approval, was a single and entire transaction; and no narrow construction of this statute, even if it has not met the approval of the courts, should be allowed to stand in the way of right and justice, or be permitted to defeat a testator's disposition of his own property. In Cook v. Winchester, 81 Mich. 581, 46 N. W. Rep. 106, 8 L. R. A. 822, it was said: 'In the definition of the phrase "in the presence of," due regard must be had to the circumstances of each particular case, as it is well settled by all the authorities that the statute does not require absolutely that the witnessing must be done in the actual sight of the testator, nor yet within the

same room with him. If, as before shown, they sign within his hearing, knowledge and understanding, and so near as not to be substantially away from him, they are considered to be in his presence.' But, as was said, in substance, in the same case, we agree that this will was validly executed expressly on the ground that the whole transaction was an entirety in fact, and that, immediately after the witnesses had attested, the instrument was returned by them to the hands of the testator, his attention was called to their signatures, and he expressed his satisfaction and approval of what had been done. This view, which does no violence to the spirit and intent of the statute, is not without precedent and authority aside from the Michigan case, although it may, as said by the court below, run contrary to a majority of the decisions. See Sturdivant v. Birchett, 10 Gratt. 67, and Riggs v. Riggs, 135 Mass. 238."

CRIMINAL LAW — HOMICIDE — EVIDENCE — DYING DECLARATIONS.—One of the points decided by the Supreme Court of Indiana, in Shenkenberger v. State, is that a dying declaration of a deceased person to the effect that she knew that her mother-in-law (defendant) had poisoned her, and that that was the way she met her death, is, in form, the statement of a fact, and not an expression of opinion, and is admissible. The court says:

"It is true that matters of opinion contained in a dying declaration are not admissible, and that the statement must be such as would have been competent if the declarant were sworn as a witness. Montgomery v. State, 80 Ind. 338; Boyle v. State, 97 Ind. 322; Boyle v. State, 105 Ind. 469, 5 N. E. Rep. 203; Whart. Cr. Ev. (9th Ed.), § 294. The difficulty is not in determining the rule, but in its application. In Boyle v. State, 97 Ind. 322; *Id.*, 105 Ind. 469, 5 N. E. Rep. 203, the declarant, answering the question, 'What reason, if any, had the man for shooting you?' said: 'Not any that I know of. He said he would shoot my damned heart out.' It was held that this answer was not the expression of an opinion. In Brotherton v. People, 75 N. Y. 159, the deceased at first did not recognize the person, who was disguised, but said: 'When he' (the latter) 'drew his pistol and commenced his pranks, he knew it was the prisoner.' Held not an opinion, and admissible. In Wroe v. State, 20 Ohio St. 460, the declarant, in speaking of the fatal wound, said 'it was done without any provocation on his part.' The court held that the same was not an expression of an opinion, saying: 'Whether there was provocation or not is a fact not stated, it is true, in the most elementary form of which it is susceptible, but sufficiently so to be admissible as evidence.' The statement of the deceased in People v. Abbott (Cal.), 4 Pac. Rep. 769, was that 'the man cut him with a knife, and he had no cause for it whatever,' and it was held the statement of a fact. The statement of the dying person in State v. Nettlebush, 20 Iowa, 257, was in answer to a question whether the shot was accidental or intentional, and the answer was that it was intentional. The evidence was held competent. In Payne v. State, 61 Miss. 161, it was held that the statement of the deceased that the defendant shot him without cause, was not the expression of an opinion. In Fuller v. State (Ala.), 23 South. Rep. 688, the dying declaration was: 'Mr. Fuller cut him to death for nothing. That he went to loose the mule, and Fuller came up and cut him in the neck. That his knife was never open, and that he did not cut Fuller's hat.' Held admissible. It was held in State v. Reed (Mo. Sup.), 38 S. W. Rep. 574, that a dying declaration that the deceased was not armed at the time he was shot by the accused was admissible. In Sullivan v. State, 102 Ala. 135, 15 South. Rep. 264, the declaration: 'He cut me for nothing. I never did anything to him,' was admitted. In Jordan v. State, 81 Ala. 20, 1 South. Rep. 577, the words were, 'Jule shot me, and Handy cut me, all for nothing,' and were held to be competent as facts. In Walker v. State, 39 Ark. 221, the declaration was, 'Nick Walker shot me.' It was proved that the declarant was shot through an auger hole at night. The evidence was held to be competent, and that it was to be dealt with by the jury. In State v. Clemons, 51 Iowa, 274, 1 N. W. Rep. 546, the declaration was: 'Ed. Clemons shot me. Ain't that right?' Held competent; the court saying that the testimony is to be excluded 'only when the declaration shows upon its face that it is a mere opinion,' and that it is for the jury to say, on the whole evidence, if the deceased intended to state a fact. In State v. Saunders, 14 Oreg. 300, 12 Pac. Rep. 441, the declaration was, 'He shot me down like a dog,' and it was held competent. In White v. State, 100 Ga. 659, 28 S. E. Rep. 423, it was decided that the declaration, 'He shot me down like a dog,' was admissible. In Richards v. State, 82 Wis. 172, 51 N. W. Rep. 652, a declaration that the declarant was stabbed without provocation was held competent. In Roberts v. State, 5 Tex. App. 141, the statement was, 'Sam Roberts killed me for nothing.' Held the statement of a fact, and not an opinion and admissible. In State v. Arnold, 13 Ired. 184, the declaration was, 'A B has shot me or killed me, and none other.' The court said: 'It must be presumed that the declarant intended to state a fact, and not an opinion. That it did not appear that deceased knew or could know the facts seems to go to the credit, and not to the competency, of the declarations. As they purport in themselves to disclose the facts, the court was bound to submit them to the jury.' In State v. Gile, 8 Wash. 12, 35 Pac. Rep. 417, the declaration, 'They butchered me,' was held admissible as the statement of a fact. In State v. Mace, 118 N. Car. 1254, 24 S. E. Rep. 798, the declaration, 'He murdered me,' was held admissible. In Lipscomb v. State, 75 Miss. 559, 23 South. Rep. 210, 230, the declaration, 'Dr. Lips-

comb has killed me—has poisoned me with a capsule he gave me to-night'—was held to be the statement of a fact, and not an opinion, and therefore competent testimony. Whitfield, J., speaking for the court as to the admissibility of the dying declaration, said: 'Any process of reasoning which seeks to distinguish between the statement, "Dr. Lipscomb poisoned me with a capsule he gave me to night," and, "Dr. Lipscomb killed or shot me," seemed to be a refinement not only too uncertain and visionary to serve in the practical administration of justice, but essentially inaccurate.' The expression 'to be poisoned by my mother-in-law,' is a mere repetition of the first part of the declaration, 'My mother-in-law poisoned me,' and is in effect the same. Such expression is no more the statement of an opinion than are the declarations, 'He shot me,' 'He murdered me,' 'He butchered me,' 'He cut me,' which have been held admissible in many cases. The court, therefore, did not err in overruling the motion to strike the last answer of the witness from the record."

VALIDITY OF JUDGMENTS RENDERED IN A FOREIGN STATE WITHOUT PERSONAL SERVICE OF SUMMONS.

The courts of no State or territory have any extraterritorial jurisdiction, and the judgments of any State must rest upon authority to render same had within the State where the court sits. The person of the defendant, so long as he remains away from the State of the forum, is absolutely free from the process and authority of any foreign court. And should any foreign court attempt to render a personal judgment against a non-resident without personal service within the State of the forum, the proceeding would be simply void and could not in any case serve as the basis for the assertion of any legal right whatever.[1] The foreign judgment may recite the fact that personal service of process was had, but this, of itself, does not make valid the foreign proceeding. If, in point of fact, no service was had upon the defendant, the judgment cannot take any validity by reason of a false recital therein. It must rest upon truth in order to be able to stand, and this being the reasonable theory it must necessarily follow that a defendant, upon being sued on a foreign judgment, may plead the want of service, and when he has fortified this plea by proper and legal evidence he will be entitled to a discharge.[2] The rule, too, applies as well to judgments in the federal courts as to those rendered by the State tribunals. There is no distinction in principle, and should be none in practice.[3] But if the foreign judgment recite the fact of process, it is not necessary that it recite the very kind of service which would be required in the State where it is attempted to enforce it. A recital of service, such as was required by the laws of the State where the judgment was rendered, is sufficient, where there is no contradiction of the service of the process recited.[4] And in the absence of a showing to the contrary, where the foreign judgment recites personal service in some manner, it will

[1] Douglass v. Forrest, 4 Bing. 686, 13 E. C. L. 693; Kilburn v. Woodworth, 5 Johns. 37; Bissell v. Briggs, 9 Mass. 462; Buchanan v. Rucker, 9 East, 192; Dearing v. Bank, 5 Ga. 497; Kibbe v. Kibbe, Kirby (Conn.), 119, 126; Darrance v. Preston, 18 Iowa, 396; Hakes v. Shupe, 27 Iowa, 465; Borden v. Fitch, 15 Johns. 121; Mitchell v. Gray, 18 Ind. 123; Pawling v. Bird, 13 Johns. 192; Cooper v. Reynolds, 10 Wall. 308; Pennoyer v. Neff, 95 U. S. 714; Freeman v. Anderson, 119 U. S. 185, 7 Sup. Ct. Rep. 165; Needham v. Thayer, 147 Mass. 536, 19 N. E. Rep. 429; Lovejoy v. Albee, 33 Me. 414; Blackman v. Wright, 96 Iowa, 541, 65 N. W. Rep. 843.

[2] Gilman v. Gilman, 126 Mass. 26; Kerr v. Kerr, 41 N. Y. 272; Wisconsin v. Pelican Insurance Co., 127 U. S. 265, 8 Sup. Ct. Rep. 1370; Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. Rep. 269; Simmons v. Saul, 138 U. S. 439, 11 Sup. Ct. Rep. 369; Grover & B. S. M. Co. v. Radcliffe, 137 U. S. 287, 11 Sup. Ct. Rep. 92; Ferguson v. Crawford, 70 N. Y. 257; Thompson v. Whitman, 18 Wall. 457; Kimball v. Merrick, 20 Ark. 12; Carlton v. Bickford, 13 Gray (Mass.), 591; Wright v. Andrews, 130 Mass. 149; Starbuck v. Murray, 5 Wend. 148; Benton v. Bengot, 10 S. & R. (Pa.) 240; Hillsborough v. Tonsley, 56 Ohio St. 540, 47 N. E. Rep. 541; Elliott v. Piersol, 1 Pet. 328; McDermott v. Clary, 107 Mass. 501; Scott v. Noble, 72 Pa. St. 105; Noble v. Oil Co., 79 Pa. St. 354; Buchanan v. Rucker, 9 East, 192; Shumway v. Stellman, 6 Wend. 447; Supreme Council Royal Arcanum, 52 N. J. Eq. 642, 29 Atl. Rep. 813; Hoffman v. Hoffman, 16 N. Y. 30; Elliott v. McCormick, 144 Mass. 10, 10 N. E. Rep. 705; Teel v. Yost, 128 N. Y. 387, 28 N. E. Rep. 353; Marx v. Fore, 51 Mo. 69; Hall v. Williams, 6 Pick. (Mass.) 232; Bank v. Anderson (Wyo.), 48 Pac. Rep. 197; Harris v. Hardeman, 14 How. 334; Aldrich v. Henney, 4 Conn. 380; Davis v. Headley, 22 N. J. Eq. 115, 121; Needham v. Thayer, 147 Mass. 536, 19 N. E. Rep. 429; Wilson v. Bank, 6 Leigh (Va.), 584; Bank v. Beebe, 53 Vt. 177; Pond v. Simons, 17 Ind. App. 84, 45 N. E. Rep. 48; Cone v. Hooper, 18 Minn. 531; Chicago, R. I. & Pac. Ry. Co. v. Campbell, 5 Kan. App. 423, 49 Pac. Rep. 321; Bissell v. Briggs, 9 Mass. 462; Bartlett v. Knight, 1 Mass. 401.

[3] Southern Ins. Co. v. Wolverton (Tex.), 19 S. W. Rep. 615.

[4] Hamil v. Talbott, 72 Mo. App. 212; Green v. Equitable Mut. L. & E. Assn., 105 Iowa, 628, 75 N. W. Rep. 635; Dodge v. Coffin, 15 Kan. 277; Ward v. Baker, 16 Kan. 31.

be presumed that the mode of service recited was in conformity to the laws of the foreign jurisdiction.[5] Indeed where the foreign court is shown to be one of general jurisdiction it will be presumed, in the absence of anything in the record affirmatively showing a want of jurisdiction over the subject-matter at issue, as well as the person of the defendant, that the court proceeded regularly and with due authority.[6] In other words, when the foreign judgment recites all the jurisdictional facts, it will be conclusive upon the parties until set aside by some direct proceeding for the purpose.[7] But the recitals in the record stand upon a different footing from the pleadings, for the record is presumed to be based upon proper and legal evidence, with the proper parties regularly in court. But the pleadings are not evidence, only allegations of fact. These, therefore, are not sufficient, alone, to show validity in a foreign judgment where the record is silent as to facts necessary to acquire jurisdiction of the person.[8] And it has been held that a judgment procured by fraud in the foreign State may be impeached for this reason in the State of residence of the defendant, though personal service was had in the foreign State.[9] If a person against whom a foreign judgment has been erroneously rendered appears in the foreign court for the purpose of assailing the judgment therein rendered, and appeals from an order denying his motion to quash the summons, he thereby makes himself a party, and while the appellate court will reverse the judgment for want of service in the first instance, yet it will remand the cause with directions to proceed with the case, giving the defendant leave to answer, for by prosecuting the appeal the defendant thereby submits to the foreign jurisdiction.[10] A foreign judgment rendered upon the authority of a power of attorney may be defeated by showing that the power of attorney was never in fact executed or the judgment authorized by the non-resident defendant.[11] Nor is it necessary before a non-resident defendant can have relief against a judgment rendered against him in a foreign State or country, that he show a meritorious defense, to the cause of action upon which the judgment was procured, for the recovery in actions on foreign judgments must be upon the ground that the judgment is valid. This is the cause and ground of action. If it be bad, the suit must fail, for no action can be maintained by reason of a thing which is void and of no force.[12] A judgment procured against a non-resident who is represented in the litigation by an attorney having no authority to act for him stands upon the same footing as judgments rendered without service.[13] And though the foreign defendant execute a warrant of attorney authorizing a confession of the foreign judgment, yet the judgment will not be valid if confessed after the period within which the authority to confess was circumscribed by the warrant itself.[14] But of course where a foreign judgment is rendered upon confession authorized by a valid power of attorney and in conformity thereto, it will become a judgment entitled to the full faith and credit required to be given all regular judgments.[15] If a judgment cannot be enforced in a foreign State because rendered without jurisdiction of the person, it is equally void in the State where rendered, for the courts of a State can no more enforce judgments against a non-resident where there has been no service of process nor appearance than they could in case of a similar judgment against a citizen. The judgment in all such cases would necessarily be void for want of jurisdiction, and being void for this reason in one place it is

[5] Westervelt v. Jones, 5 Kan. App. 35, 47 Pac. Rep. 322; Dodge v. Coffin, 15 Kan. 277.

[6] Westervelt v. Jones, 5 Kan. App. 35, 47 Pac. Rep. 322; Laing v. Rigney, 160 U. S. 531, 16 Sup. Ct. Rep. 366; Tourigny v. Houle, 88 Me. 406, 34 Atl. Rep. 158; Nations v. Johnson, 24 How. 195; Supreme Council Royal Arcanum v. Carley, 52 N. J. Eq. 642, 29 Atl. Rep. 813.

[7] Brickhouse v. Sutton, 99 N. Car. 103, 5 S. E. Rep. 380; Harrison v. Hargrove, 120 N. Car. 96, 26 S. E. Rep. 936. But see, *contra*, Pennoyer v. Neff, 95 U. S. 714; Boswell v. Otis, 9 How. 336.

[8] Lafayette Ins. Co. v. French, 18 How. 404.

[9] Bank v. Anderson (Wyo.), 53 Pac. Rep. 280. And see Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. Rep. 269.

[10] Arkansas Coal, Gas, F. C. & Mfg. Co. v. Haley, 62 Ark. 144, 34 S. W. Rep. 545.

[11] Wilson v. Bank, 6 Leigh (Va.), 570.

[12] Bartlott v. Knight, 1 Mass. 401; Bissell v. Briggs, 9 Mass. 462.

[13] Hays v. Merkle, 67 Mo. App. 55.

[14] First National Bank v. Cunningham, 48 Fed. Rep. 510.

[15] Teel v. Yost, 128 N. Y. 387, 28 N. E. Rep. 353.

equally so in another.[16] It is sometimes attempted to assert that foreign judgments rendered without service or appearance are not void, though jurisdiction of the defendant has never been acquired; but this cannot be correct. If the want of jurisdiction exists the judgment and all proceedings thereunder are void, not voidable. The judgment is an absolute nullity and can form the basis for the assertion of no right or privilege.[17] But of course this does not imply that all foreign judgments must be treated as void. If the judgment recites the facts necessary to show jurisdiction it will be presumed regular and valid until the defendant plead and prove otherwise, notwithstanding the recitals of service may show that a different mode of procedure was had than that which would be required in the jurisdiction in which the judgment is sued on.[18] So, the mere fact that the judgment of a foreign court may fail to recite that there was a trial by jury will not invalidate it when sued on in a State other than that of rendition, for the issues may have been such that a jury might not have been legally demanded, or the parties may have waived a jury trial.[19] But the judgment may be void, not only for the want of personal service, but for the want of right in the plaintiff to sue for any reason. Thus in many States the law requires a residence for a prescribed length of time before a litigant will be entitled to maintain an action for a divorce. Until the litigant has lived in the State the required period of time, he has no right to invoke the assistance of the courts of such State to grant him relief for any grievance under the divorce laws. And if he should, through fraud, collusion or even ignorance, procure a judgment before he had resided in the State the required length of time, the decree would not bind the defendant, and probably not the plaintiff. For, in cases of this kind, the residence for their prescribed period is a prerequisite to jurisdiction with like effect as the service of a summons in an ordinary action. But in the absence of fraud or bad faith, the ascertainment of the fact of residence for the necessary time by the foreign tribunal will be conclusive as to the validity of the judgment to the extent that it might be assailed on the ground that the plaintiff had not resided within the State for the time required.[20] It has been held that a judgment of divorce had in a foreign jurisdiction without service of process or appearance is a nullity as to the defendant, at least so far as the judgment affects any property rights.[21] And especially should this be the rule where neither party is a *bona fide* resident of the State in which the judgment is rendered.[22] Where the bonds of matrimony are dissolved in a proceeding for divorce, and by the law of the State where the divorce is rendered one or both of the parties are forbidden to again marry within a certain time under prescribed penalties, a marriage by one or both beyond the State in which the judgment is rendered will neither be invalid nor subject the party marrying again to the penalty denounced by the foreign law.[23] It is held in North Carolina that the decree of a foreign court regular upon its face and which recites proper service of summons on the defendant, is valid to the extent that an innocent purchaser buying land sold thereunder will take a good title.[24] The rule is different, of course, where the purchaser knows of the want of service, or has knowledge of facts sufficient to put him upon inquiry which, if properly followed up, would reveal the true state of the judgment; for then the purchaser would be estopped to allege his innocence.[25] The jurisdiction of the courts cannot be extended beyond the limits

[16] Picquet v. Swan, 5 Mass. 35; Fenton v. Garlick, 8 Johns. 194; Borden v. Fitch, 15 Johns. 121; Babcock v. Marshall (Tex. Civ. App.), 50 S. W. Rep. 728; Robertson v. Pickerell, 109 U. S. 608, 3 Sup. Ct. Rep. 107; Frame v. Thorman (Wis.), 79 N. W. Rep. 39.

[17] Doyle v. Brown, 72 N. Car. 395; Harrison v. Hargrove, 120 N. Car. 96, 26 S. E. Rep. 936; Aldrich v. Kinney, 4 Conn. 380; Whittier v. Wendall, 7 N. H. 257; Pauling v. Willson, 13 Johns. 192.

[18] Dodge v. Coffin, 15 Kan. 277; Ward v. Baker, 16 Kan. 31.

[19] Stewart v. Sholl, 90 Ga. 534, 26 S. E. Rep. 757.

[20] Fairchild v. Fairchild, 53 N. J. Eq. 678, 34 Atl Rep. 10; Magowan v. Magowan (N. J. Err. & App.), 42 Atl. Rep. 330.

[21] Borden v. Fitch, 15 Johns. 121; Raymond v. Raymond (Ind. Ter.), 37 S. W. Rep. 202.

[22] Hoffman v. Hoffman, 46 N. Y. 30; Kerr v. Kerr, 41 N. Y. 272.

[23] Dickson v. Dickson's Heirs, 1 Yerg. (Tenn.) 110; Wilson v. Holt, 83 Ala. 528, 3 South. Rep. 321; Succession of Hernandez, 46 La. Ann. 962, 15 South. Rep. 461; Commonwealth v. Lane, 113 Mass. 458; Cox v. Combs, 8 B. Mon. (Ky.), 231; Van Voorhis v. Britnall, 86 N. Y. 18; Thorp v. Thorp, 90 N. Y. 602; Moore v. Hageman, 92 N. Y. 521; Ponsford v. Johnson, 2 Blatchf. 51; People v. Chase, 83 Me. 205, 23 Atl. Rep. 114; Frame v. Thorman (Wis.), 79 N. W. Rep. 39.

[24] Harrison v. Hargrove, 120 N. Car. 96, 26 S. E. Rep. 936.

[25] Chambers v. Brigman, 75 N. Car. 487.

of the State by statutes authorizing personal judgments upon certain prescribed, actual or constructive process. And statutes which authorize the service of process in any manner or by any person or officer upon a litigant or party to an action who is beyond the limits of the State when served, are absolutely void to the extent that they authorize a personal judgment by virtue of such service of summons or like process.[26] And if a return to a summons upon which a foreign judgment has been rendered shows that the defendant was served out of the State in which the litigation was pending, this will be sufficient proof of the want of authority in the foreign court to render the judgment.[27] There is potent reason for the rule holding such statutes unconstitutional and void. No State has any right to thrust its courts upon the citizens of another and compel them to be bound by such foreign tribunals simply by a legislative enactment or any other kind of law. Every State is absolutely sovereign except as its powers are circumscribed by the federal constitution, and the lawful acts of congress passed in pursuance thereof, but this sovereignty does not, and cannot extend, in the least beyond the limits of the sovereignty. Indeed, it naturally forbids any invasion of any foreign court. Of course, a foreign judgment recovered without jurisdiction of the court rendering the same, does not extinguish the obligation sued on, for such a judgment is but a nullity, and the debt is not absorbed by reason of the doctrine of merger. There is nothing for it to merge into.[28] And such a judgment being void, it cannot be pleaded as *res adjudicata* in another action upon the same liability.[29] But a judgment of a foreign court, which has jurisdiction of both the person and subject-matter, is conclusive, in the absence of fraud, as to all matters which might have been pleaded by the defendant, though there might have been irregularities or informalities in rendering same.[30] Upon this principle it is correctly held that a domestic court will not inquire whether a foreign court correctly interpreted the statute of limitations.[31] And where the parties to an action are once regularly in court, the fact that after judgment one of them becomes a non-resident and proceedings against him in error are prosecuted upon constructive notice, or service, in conformity to the laws of the foreign State, the decision on appeal will bind him just as though he had remained in the foreign jurisdiction.[32] And the fact that a foreign judgment might or should have been reversed cannot avail a defendant in an action thereon where the foreign court had jurisdiction. The courts of the State of the domicile would not sit as courts for the correction of errors of law, or procedure, to correct the rulings of a foreign court having jurisdiction.[33] In short, the only defense to a judgment rendered by a court of a foreign State, as a general rule, is fraud, or want of jurisdiction of the parties or subject-matter.[34]

The federal constitution provides that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."[35] And, in order to make this requirement of the national constitution effective, congress, in 1790, passed an act providing the manner of authenticating the judgments of foreign States, and that the records and judgments of other States thus authenticated should have full faith and credit given them in every court within the United States, as by law or usage they have in the courts of the State in which the judgment is rendered.[36] In an early case, construing this act of congress, the Supreme

[26] Lovejoy v. Albee, 33 Me. 414; Dearing v. Bank, 5 Ga. 497; Pennoyer v. Neff, 95 U. S. 714; Buchanan v. Rucker, 9 East, 192.

[27] Hinton v. Penn Mut. Ins. Co. (N. Car.), 35 S. E. Rep. 182.

[28] Tourigny v. Houle, 88 Me. 406, 34 Atl. Rep. 158.

[29] Whittier v. Wendell, 7 N. H. 257; Bank v. Beebe, 53 Vt. 177; McCadden v. Slausen, 96 Tenn. 586, 36 S. W. Rep. 378.

[30] Fitzsimmons v. Johnson, 90 Tenn. 416, 17 S. W. Rep. 100; Taylor v. Smith (Tenn. Ch. App.), 36 S. W. Rep. 970; Nations v. Johnson, 24 How. 195; Thompson v. Whitman, 18 Wall. 457; Fisher v. Fielding, 67 Conn. 92, 34 Atl. Rep. 714; Cox v. Barnes, 45 Neb. 172, 63 N. W. Rep. 394; Peel v. January, 35 Ark. 331; Elliott v. Piersol, 1 Pet. 328, 340.

[31] Fitzsimmons v. Johnson, 90 Tenn. 416, 17 S. W. Rep. 100.

[32] Nations v. Johnson, 24 How. 195; Fitzsimmons v. Johnson, 90 Tenn. 416, 17 S. W. Rep. 103; Cone v. Hooper, 18 Minn. 531; Becquet v. McCarthy, 2 Barn. & Ald. 951.

[33] Central Trust Co. v. Seasongood, 130 U. S. 482, 9 Sup. Ct. Rep. 575.

[34] Cooper v. Reynolds, 10 Wall. 308.

[35] Const. U. S., Art. 4, § 1.

[36] 1 Stat. at L. 122.

Court of the United States, speaking through Mr. Justice Story, held that "the act duly authenticated shall have such faith and credit as it has in the State court from which it is taken. If in such court it has the faith and credit of evidence of the highest nature, viz: record evidence, it must have the same faith and credit in every other court."[37] But this early decision of the highest federal tribunal has not been literally adhered to by either State or federal courts. In the later case of Thompson v. Whitman,[38] the court, referring to the earlier ruling, said: This decision has never been departed from in relation to the general effect of such judgments where the questions raised were not questions of jurisdiction. But where the jurisdiction of the court which rendered the judgment is assailed, quite a different view has prevailed.[39] And it is held, in a still later case, that the act of congress and the first section of the fourth article of the constitution do "not prevent an inquiry into the jurisdiction of the court in which the judgment is rendered to pronounce the judgment, nor into the right of the State to exercise authority over the parties or the subject-matter, nor whether the judgment is founded in, or impeachable for, a manifest fraud."[40] It is clear from these authorities that the federal laws are in no sense opposed to the views taken of the validity of foreign judgments.

When a judgment has been recovered in a foreign State, it cannot, of course, be utilized as a basis of process in the nature of an execution, or similar writ, for the enforcement thereof in any other State than that in which it is rendered. As to all other States, it is not a judgment, but an evidence of indebtedness, adjudicated and settled, and entitling the plaintiff therein, when regularly obtained, to a judgment *in personam* against the defendant in the State of his residence, or elsewhere, he may be found.

This discussion of the validity of foreign judgments should not be understood as denying the court of any State the authority to proceed *in rem* against any property found within its jurisdiction for the purpose of realizing any claim accrued to a citizen. Reference is had to personal judgments only.

W. C. RODGERS.

[37] Mills v. Duryee, 7 Cranch, 481, 484.

[38] 18 Wall. 457.

[39] See M'Elmoyle v. Cohen, 13 Pet. 312; Huntington v. Attrill, 146 U. S. 657, 13 Sup. Ct. Rep. 224; Pennoyer v. Neff, 95 U. S. 714.

[40] Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. Rep. 269; First Nat. Bank v. Cunningham, 48 Fed. Rep. 510.

BILLS AND NOTES — BONA FIDE PURCHASERS—ALTERATION.

STATTON v. STONE.

Court of Appeals of Colorado, June 11, 1900.

1. One who has signed and put into circulation a negotiable note containing an unfilled blank, thus rendering a change in the instrument increasing his liability, not discernible in its appearance, easy of execution, cannot be heard to allege that it was altered, or that the plaintiff paid no consideration for it, in a suit by one who has taken it after maturity from a *bona fide* purchaser.

2. Want or failure of consideration cannot be averred against an innocent purchaser of a negotiable note before maturity.

THOMPSON, J.: The complaint alleged the execution by the defendant, John H. Stone, of a promissory note for $200, payable on the 1st day of September, 1896, to himself; the indorsement and delivery of the note by him to the Mutual Life Insurance Company of New York; its transfer, before its maturity, by the company, to the State Bank of Monte Vista; and its subsequent transfer by the bank to the plaintiff, William O. Statton. Non-payment was averred, and judgment prayed. The answer alleged that a material alteration was made in the note by the insurance company after it had passed from the hands of the plaintiff, and while the company owned and held it; that the alteration consisted in so filling certain blanks as to make the note payable with interest from date until paid at the rate of 10 per cent. per annum. An alleged copy of the note as it was when the company received it is contained in the answer, and with reference to interest in its language was as follows: "With interest at the rate of ——— per cent. per annum from ——— until paid." The alteration charged was the insertion of the figure "10" in the first blank, and the insertion of the word "date" in the second. The answer admitted that the bank was a purchaser of the note, for value, before its maturity, but averred that it was transferred to the plaintiff after it became due, and that he paid no consideration for it. The answer stated further that the note was delivered to the company in consideration of its agreement to issue to the defendant a policy of insurance upon his life, but that the company had failed to perform its agreement. The plaintiff demurred to the answer on the ground that the facts which it stated did not constitute a defense. The demurrer was overruled. The defendant prevailed at the trial, and the plaintiff appealed.

The defendant testified that the consideration of the note was the agreement of the agent of the

Mutual Life Insurance Company to issue two policies on his life for $5,000 each; that he signed a blank application, and trusted the agent to fill it out; that it was not filled out in accordance with his directions, the applicant's age be exaggerated, thus increasing the amount to be paid as premium; that because of this error he refused to receive the policies; that no rate of interest was originally specified in the note; that the word "date" was in it when he signed it, but that the figure "10" was not; and that in verifying an answer which stated that both the figure and the word were absent he was mistaken. The other evidence leaves it in considerable doubt whether the note was not completely filled at the time of its execution, but leaves it entirely clear that when the bank bought the note there was nothing in its appearance to excite suspicion, and that the bank was an innocent purchaser of the paper. At the close of the trial, the plaintiff requested the court to direct a verdict in his favor. The request was refused, and a number of instructions given, concerning which all that need be said is that there was nothing in the case to justify them. The answer stated no defense, and none appeared in the proof. Both on the pleadings and evidence the plaintiff was entitled to the judgment. The demurrer should have been sustained; but, as it was not, and a trial was had, upon the evidence the court should have instructed the jury to find for the plaintiff. The difference between the testimony of the defendant and his answer was immaterial. Whether he delivered the note with one unfilled blank, as he testified, or two, as he answered, is of no manner of importance. According to both answer and testimony, he signed and put into circulation a negotiable promissory note, unfilled as to one or more blanks, thus rendering easy of execution a change in the instrument increasing his liability, but not discernible in the appearance of the paper. Having, by his gross negligence, put it into the power of the agent of the insurance company to impose upon the bank, and to obtain its money upon the faith of his signature to a note regular and honest in its appearance, he cannot be heard to allege in this suit that it was altered. Rainbolt v. Eddy, 34 Iowa, 440; Davidson v. Lanier, 4 Wall. 447, 18 L. Ed. 380; Angle v. Insurance Co., 92 U. S. 330, 23 L. Ed. 556; Yocum v. Smith, 63 Ill. 321; Garrard v. Haddan, 67 Pa. St. 82; Abbott v. Rose, 62 Me. 194; Van Duzer v. Howe, 21 N. Y. 531; Blakey v. Johnson, 13 Bush, 197. "Whenever one of two parties must suffer by the act of a third, he who has enabled that third person to occasion the loss must sustain it himself rather than the other innocent party." Wyman v. Bank, 5 Colo. 30. We are referred to the decision of Hoopes v. Collingwood, 10 Colo. 107, 13 Pac. Rep. 909, as announcing a different doctrine, but that it does not will be seen by a glance at the opinion. There the bank, in whose behalf the suit was brought, made the alteration in the note. Instead of being an innocent purchaser of the paper after the alteration was made, it was itself the guilty party, and the court righteously held that its wrongful act precluded a recovery in its favor. It is true that the plaintiff took the note after its maturity, but he acquired the title which the bank had, and that was good. All the rights and remedies of the bank in connection with the paper passed to the plaintiff with the transfer; and it is immaterial what, if anything, he paid the bank for the note. The legal title was in him, so that he could maintain the suit in his own name, and the consideration or want of consideration of the transfer is something into which the defendant has no right to inquire. Walsh v. Allen, 6 Colo. App. 303, 40 Pac. Rep. 473. It is also entirely unimportant whether the insurance company performed its agreement with the defendant or not. Want of consideration or failure of consideration cannot be averred against an innocent purchaser of negotiable paper before its maturity. The court erred before the trial in overruling the demurrer to the answer, and it erred after the trial in refusing to direct a verdict for the plaintiff. Let the judgment be reversed. Reversed.

NOTE.—*Alteration of Negotiable Instruments by the Unauthorized Filling up of Blanks, as Against a Bona Fide Holder.*—The alteration of negotiable instruments is a much litigated subject and one of more than ordinary importance, since under the marvelous extension of the credit system to the transactions of trade and commerce such instruments are rapidly increasing in use and favor as medium of exchange. It is the general rule uncontradicted by authority that any material alteration of a note will render it invalid as against any party thereto not consenting to such alteration, even in the hands of a *bona fide* holder. Horn v. The Bank, 32 Kan. 518; Middaugh v. Elliott, 61 Mo. App. 601; Bank v. Lawson, 31 N. Y. Supp. 18; Derr v. Keaough, 96 Iowa, 397. And this is the case even though the alteration is in favor of the maker, as in changing the rate of interest from ten to eight per cent. Middaugh v. Elliott, *supra*. In Missouri the courts have gone still further and held that any alteration by the holder of a note, after delivery and without the consent of the maker, however immaterial in its nature, will vitiate the instrument and render the same void even as to innocent third persons where the note was not carelessly drawn with blanks left unfilled. Kingston Savings Bank v. Bosserman, 52 Mo. App. 269; Bank v. Fricke, 75 Mo. 178; Haskell v. Champion, 31 Mo. 136. In the latter case, Scott, J., said: "The law dealing with the subject of the alteration of written instruments looks further than to the materiality or the immateriality of the alteration. Aware of the danger of countenancing the most trifling change it has not permitted those intrusted with such instruments to alter them and afterward defend their conduct by alleging the immateriality of the alteration. As the nature and purposes of contracts require that they should pass to the hands of those who are interested in altering them to the prejudice of those who executed them, and as the facilities for making alterations are numerous, and the difficulty of proving them is great, all means should be employed to impress on the minds of those who are in possession of such paper a sense of its inviolability." Such is the general rule also in New Jersey. Bell v. Quick, 1 Green (N. J.), 312; Hunt v.

Gray, 10 Am. Rep. 232.

The execution and indorsement of commercial paper in blank has given rise to questions of peculiar difficulty upon some of which the authorities are in hopeless conflict. The execution of a negotiable instrument in blank, even as to any of its material terms, is, to say the least, unwise and dangerous, and is and should be discouraged by the courts. A negotiable instrument is more than a private contract between the immediate parties thereto. Between the date of its issuance and that of its maturity it has all the attributes of a medium of exchange and the public generally are interested in its careful, certain and unambiguous execution. It is the duty of the maker of a note to guard not only himself but the public against frauds and alterations by refusing to sign negotiable paper made in such a form as to admit of fraudulent practices upon them with ease and without ready detection. Van Duzer v. Howe, 21 N. Y. 538. It is the general rule that any one who signs his name either as maker or indorser to a negotiable instrument executed in blank and delivers it to another thereby impliedly authorizes the holder to fill it up as he pleases in any manner not inconsistent with the character of the instrument itself. Goodman v. Simonds, 61 U. S. 343; White v. Alward, 35 Ill. App. 195; Geddes v. Blackmore, 132 Ind. 551; Snyder v. Van Doren, 46 Wis. 602; Jones v. Insurance Co., 58 Ky. 58; Frank v. Lillienfeld, 33 Gratt. 377. This rule applies as to the name of the payee (Bank v. Johnston, 97 Ala. 655); as to the amount (Gothrup v. Williamson, 61 Ind. 599); as to time and place of payment (Lowden v. Bank, 38 Kan. 533; Shephard v. Whetstone, 51 Iowa, 457), and also in some States as to the rate of interest. Visher v. Webster, 8 Cal. 109. For instance, where A and B. as sureties of C, sign an instrument in blank as to date, amount and time, and delivered it to C, the principal, with the agreement that it should not be filled up for more than $1,500. C filled it up for $10,000 and discounted it, and it was held that the parties were bound. Fullerton v. Sturgis, 4 Ohio St. Where A, an accommodation maker for B, signed a note upon the upper left hand corner of which were the figures $45, but the amount of which was left blank, with the understanding that B should fill the blank so as to make it a note for $45. B, however, before delivery, added a cipher to the figures and filled in the blank with the words "four hundred and fifty dollars". Held, first, that the figures were no part of the note, and an unauthorized change in them did not vitiate the note; second, that A, having intrusted the blank to B, was, as against persons having no knowledge of his want of authority, bound by the act of B. Johnson Harvester Co. v. McClean, 57 Wis. 258. See also Ives v. The Bank, 2 Allen, 236; Diercks v. Roberts, 13 S. Car. 338; Hopps v. Savage, 69 Md. 402. But the authority in the holder to fill up blanks left in the instrument by the maker would not authorize him to make any addition to the terms of the note, as by adding the words "with interest," nor to vary or alter the terms of the instrument by erasing what is already written or printed there. Ivory v. Michael, 33 Mo. 400; Angel v. Insurance Co., 92 U. S. 331; Coburn v. Webb, 56 Ind. 100.

As far as the certainties of a note are concerned, the date, the payee, the amount and the time of payment, there should be no doubt as to the implied authority in the holder to fill them up as he pleases, in order that the paper may be made perfect as a negotiable instrument. Moreover, if the whole instrument was in blank, with spaces for the rate of interest and place of payment, and there existed no agreement to the contrary, there would seem to be no good reason to deny the right of the holder to fill up such spaces also; with this limitation, that in the case of interest, no authority is conferred to insert a rate higher than that allowed by law. Bank v. Carson, 60 Mich. 437; Hoopes v. Collingwood, 10 Colo. 107. The insertion of a rate of interest in a blank left for that purpose and unfilled by the maker or indorsee in executing the note is a fruitful source of more unfortunate and unnecessary litigation than arises under any other phase of this question. This is probably due in the first place to the fact that notes are generally written out upon forms or engraved with the usual terms of such instruments so that if a man wishes to draw a note without specifying any rate of interest he must draw his pen through the space left for that purpose. If he leaves the space blank difficulty arises, but this only when the rights of the maker clash with those of a *bona fide* holder. For as between the immediate parties it would seem to be the correct rule that where an instrument is properly filled out in all its parts, with the exception of a blank space left for the insertion of the rate of interest, the holder acquires no right to fill in such blank without authority from the maker. The maker by leaving the space blank shows an evident intention that no rate of interest shall be inserted in the contract, and as between the parties it would be a clear case of a material alteration such as would avoid an instrument in the hands of any one but a *bona fide* holder or his transferee, and applying the general rule as to alterations would be a good defense even against the latter if the maker or indorser leaving such blanks unfilled were not estopped by their own negligence from setting up the defense. This we believe to be the rule announced by the weight of authority. Bank v. Armstrong, 62 Mo. 67; Rainbolt v. Eddy, 34 Iowa, 440; Visher v. Webster, 8 Cal. 109. Another line of cases, however, hold that a forged insertion of interest in a blank for that purpose in a negotiable promissory note will discharge the maker even as against an innocent purchaser for value before maturity. Washington Bank v. Ecky, 51 Mo. 272; Bank v. Stowell, 123 Mass. 196; Bank v. Clarke, 51 Iowa, 264. In the case of Capital Bank v. Armstrong, 62 Mo. 60, however, overruling the case of Bank v. Ecky, *supra*, it was held that the indorser or maker of a note will not be held bound by a fraudulent alteration made subsequently to his indorsement, unless through negligence blank spaces have been left in the instrument or the instrument has been so loosely drawn as to easily admit of alteration and in a manner not calculated to place a man of ordinary prudence on the alert. The court gives a succinct statement of the rule regarding the negligence of a maker in omitting to fill blanks in a negotiable instrument: "Where a party to a negotiable instrument permits it to be so loosely drawn as to render the addition of words enlarging his liability a manner of comparative ease and such instrument is negotiated before maturity to an innocent purchaser for value, the maker will be held bound by the alteration. As, for instance, where a blank is not completely filled but space is left for the easy addition of other words, in a manner not providing attention. This rule prevails in accordance with the maxim, a sound one alike in ethics as in law that 'where one of two innocent parties must suffer, that party must be the sufferer who gave occasion to the commission of the wrong.'"

BOOKS RECEIVED.

Jewish Laws and Customs. Some of the Laws and Usages of the Children of the Ghetto. By A. Kingsley Glover, Wells, Minn. W. A. Hammond, Publisher, 1900. pp. 259. Cloth, Price, $1.50. Review will follow.

Psychopathia Sexualis, with Especial Reference to Antipathic Sexual Instinct. A Medico-forensic Study, By Dr. R. v. Krafft Ebing. The only authorized English Translation of the Tenth German Edition. Chicago, W. T. Keener & Co., 52 Randolph Street, 1900. Half Morocco, pp. 585. Price, $5.00. Review will follow.

A Treatise on the Law of Roads and Streets, by Byron K. Elliott and William F. Elliott, Authors of "General Practice," "Appellate Procedure," "The Law of Railroads." Second Edition. Indianapolis-Kansas City. The Bowen-Merrill Company, 1900. Sheep, pp. 1185. Review will follow.

BOOK REVIEWS.

OUTLINE STUDY OF LAW, THIRD EDITION.

This work is intended as a first book in law and a general introduction to the whole body of American jurisprudence. The subject is presented in a way calculated to attract the attention of the reader and whet the appetite for more. The author with much elegance of language, with much condensation and brevity, discusses in part the following subjects: Popular fallacies regarding law and lawyers, public law of nations, international law in time of peace, and in time of war, the new magna charter, Roman law, Christianity and Roman law, legal evolution, domestic relations, corporations, wills, commercial paper, partnership, bailments, insurance, wills, leases, torts, shipping, copyrights and many other subjects of equal interest. These various subjects are lectures by Isaac Franklin Russell, D. C. L., LL. D., Professor of law in New York University. The lecture on popular fallacies regarding law and lawyers is worth the price of the book. We quote a short paragraph from this lecture: "It is seriously urged that no lawyer has a right to represent a client or a cause that may happen to be in the wrong. But how is the lawyer to know that his client is a rascal or that his suit is hopeless? Who can tell the end from the beginning? Shall he reach his conclusion from a one side inquiry? Hear the other side, is the rule which governs the procedure of the court. Shall the attorney be less thorough in his investigation? But he should know the law so as not to undertake a case that is bound to fail. True; but who does know the law? Not the judges of the United States Supreme Court; for dissenting opinions appear in about one-third of the reported cases. Truth can only be ascertained by sincere and fearless inquiry. It cannot suffer from the honest zeal of the advocate, and these propositions apply as well to questions of fact as to questions of law. Why ask an attorney to prejudge a case and decide his own client to be in the wrong without hearing the other side? Why hold him responsible for a miscarriage of justice as if he were the only officer of the court, and as if there were no judge and no jury? Shall we usurp their functions? The public has called him to no such responsibility." The lecture on Christianity and Roman law is especially interesting. In this lecture the theory of evolution finds a strong champion. Both Moses and Jesus may be considered as committed to the doctrine of evolution. It was not pretended that the Jewish law was ideally perfect, the original of justice devinely revealed, but it was to be regarded as simply relatively excellent, and adapted to the state of society for which it was promulgated. This book is 8vo., bound in buckram, contains 270 pages. Published by Baker, Voorhis & Co., 66 Nassau St., New York.

JETSAM AND FLOTSAM.

TRADE-MARK.

We notice a statement in the September issue of the *American Lawyer*, that another law periodical is infringing upon its trade mark or copyright by calling itself the *American Lawyers' Quarterly*. We know nothing of the merits of the controversy, but if it is as stated by the *American Lawyer*, it would seem that the latter named periodical has good grounds for complaint.

INTERNATIONAL LAW AND CHINA.

The sequence of events in China this week has simplified what has been for some time, from the point of view of international law, an anomalous situation. Armed forces, military and naval, of the Great Powers have been directed against the irregular and, in a large measure, the regular troops of the Yellow Empire. And yet, diplomatically speaking, Europe is at peace with China. No doubt there were excellent reasons of policy for the maintenance of the theory that the Chinese Government has been co operating with the Western Governments in the suppression of the Boxers' insurrection. But in practice the point is soon reached at which this fiction of international law becomes no longer capable of being supported, and the tone and terms of the recent Chinese Imperial edicts have now undoubtedly brought that critical point very near to us. The nearest analogue, however, to the position of matters during the past few weeks is perhaps to be found at the time of the campaign of Dettingen, when an English king was leading English troops against the French while diplomatic relations between the Court of St. James and that of Versailles were nominally undisturbed.—*London Law Times.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACTION ON BOND—Pleading—Extension of Time.—A plea setting up extension of time of payments to the principal by the obligee of a bond must show a consideration for the agreement to extend, in order to give it legal effect as a release to the surety. In this respect it differs from the rule of pleading which applies to a declaration.—PALMER v. WHITE, N. J., 46 Atl. Rep. 706.

2. ADMINISTRATION—Decedent's Estate—Mortgagee's Claim.—Where a mortgagee of land probated his claim against the deceased mortgagor's estate, unsecured creditors of the estate could not compel him to first foreclose his mortgage before sharing in a *pro rata* distribution among creditors ordered by the probate court, as secured, and unsecured claims are classed and paid on the same basis.—LOFLAND v. COWGER, Ark., 57 S. W. Rep. 797.

3. ADVERSE POSSESSION — Boundary Agreement.—Where two coterminous proprietors, disputing over a boundary line, agreed to abide by a certain survey, and moved their buildings and fences accordingly, one proprietor's possession of the disputed land became from that time adverse to that of the other.—SCHWARTZER v. GEBHARDT, Mo., 57 S. W. Rep. 782.

4. ADVERSE POSSESSION — Mortgagor against Mortgagee.—Where a mortgagor made interest payments to a mortgagee within 20 years prior to an action to foreclose, though more than that time had elapsed since the maturity of the mortgage debt, such action was not barred by the statute of limitations (section 16), providing that entry to lands shall be made within 20 years after the right to enter shall accrue, since the possession of the mortgagor while he continued to make payments was not adverse to that of the mortgagee.—DEPEW v. COLTON, N. J., 46 Atl. Rep. 728.

5. ASSIGNMENT—Partially Executed Contract.—An assignment of the right to do the work specified in a contract, made after a portion of such work had been completed by the assignor, refers only to the work still to be done, and does not vest in the assignee the right to recover the retained percentage due on the work previously done.—CONNOLLY v. DUNBAR, U. S. C. C., E. D. (Penn.), 102 Fed. Rep. 44.

6. ASSIGNMENT FOR CREDITORS. — Where a debtor made an assignment for the benefit of his creditors, but the assignee never filed an inventory, or qualified as such, and the assignor subsequently settled with his creditors, the assignee had no lien on the property for a debt due him, as his title ceased when the trust failed.—MORAN v. MCINERNEY, Cal., 61 Pac. Rep. 575.

7. ATTACHMENT—Levy—Equity of Redemption.—An attachment is leviable on an equity of redemption in lands.—BRITISH & AMERICAN MORTG. CO. v. NORTON, Ala., 28 South. Rep. 31.

8. BANK CHECK—Collection — Payment.—Where the payee of a check put it in the hands of a bank for collection, and the drawee bank, on receiving it by mail, marked it "Paid," sent a draft to the collection bank for the amount, and surrendered the check to the drawer, after charging the item to his deposit account, the check was paid, as between the payee and drawer, though the draft was dishonored and the paying bank failed.—O'LEARY v. ABELES, Ark., 57 S. W. Rep. 791.

9. BANKRUPTCY—Jurisdiction of District Court over Suit.—Jurisdiction of civil actions at law and plenary suits in equity to determine title to and reduce to possession alleged assets of a bankrupt is not included in the clauses of § 2 of the bankruptcy act of 1898, which confer upon district courts of the United States power to bring in and substitute additional parties in proceedings in bankruptcy, to make orders, issue process and enter judgments necessary for the enforcement of the "provisions of this act" and "to cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided," since § 23 of the act is intended to define the jurisdiction of such courts over such suits.—BARDES v. FIRST NAT. BANK OF HAWARDEN, IOWA, U. S. S. C., 20 Sup. Ct. Rep. 1000.

10. BANKRUPTCY—Opposition to Discharge.—To sustain specifications in opposition to a bankrupt's application for discharge, on the ground of his failure to keep proper books of account, it is not sufficient to show that the true state of his affairs could not be ascertained from the books as kept, but the evidence must fairly prove that his mode of keeping them was with a fraudulent intent to conceal his financial condition, and in contemplation of bankruptcy.—IN RE BRICE, U. S. D. C., S. D. (Iowa), 102 Fed. Rep. 114.

11. BANKRUPTCY—Preferences—Payment of Money.—Payment of a debt in money is a transfer of property, within the meaning of Bankr. Act 1898, § 60a, providing that a debtor shall be deemed to have given a preference if, being insolvent, he has made a transfer of any of his property, and the effect of the enforcement of such transfer will be to enable one of his creditors to obtain a greater percentage of his debt than other creditors of the same class.—IN RE SLOAN, U. S. D. C., S. D. (Iowa), 102 Fed. Rep. 116.

12. BANKRUPTCY—Requiring Bankrupt to Surrender Property.—A court of bankruptcy has power and jurisdiction to make an order, after due hearing of the parties, requiring the bankrupt to pay or deliver to his trustee in bankruptcy a sum of money found to be in his possession or control, and constituting assets of his estate in bankruptcy, and which he has not surrendered or accounted for, and to enforce his obedience to such order by commitment as for contempt.—IN RE SCHLESINGER, U. S. C. C. of App., Second Circuit, 102 Fed. Rep. 117.

13. BANKRUPTCY—Summary Jurisdiction—Return of Property.—Goods in actual possession of a bankrupt at the time of his adjudication as such, and at time of the reference of the case to a referee, who directs them to be locked in a store, are in custody of the United States court, from which they cannot be taken upon any process from a State court.—WHITE v. SCHLOERB, U. S. S. C., 20 Sup. Ct. Rep. 1007.

14. BILLS AND NOTES—Delay in Presentation.—A *bona fide* holder of a check is under no obligation to the drawer to present it for payment within a reasonable time, and is not prejudiced by delay in doing so, except where the fund has been lost by failure of the bank.—ANDRUS v. BRADLEY, U. S. C. C., E. D. (Penn.), 102 Fed. Rep. 54.

15. BUILDING AND LOAN ASSOCIATIONS—Bond and Mortgage.—Where a bond and mortgage given by defendant K to plaintiff at the time of procuring a loan both provided for the payment of a stipulated sum per month as interest on the loan. K and his successors in interest were entitled to credit against the principal only for payments of dues and premiums, and not to deductions for interest paid on the loan. The

rule of partial payments does not apply in such case.—PEOPLE'S BUILDING LOAN & SAVINGS ASSN. V. KROEGER, Utah, 61 Pac. Rep. 559.

16. CARRIERS—Interstate Shipment—Liability for Appropriation of Goods.—Where goods were wrongfully delivered by a carrier to a steamship company instead of to the owner, and were carried to another place, the company, having notice of the ownership, had no lien on the goods for freight, and on selling them was liable for conversion; for, though it was the duty of such company to receive goods tendered it for shipment by connecting carriers, it was not exempt from liability for goods shipped by one without authority.—LIEFERT V. GALVESTON, L. & H. RY. CO., Tex., 57 S. W. Rep. 899.

17. CARRIERS—Passenger—Contract Limiting Liability.—A railroad company cannot relieve itself by any contract from its duty to exercise the greatest possible care and diligence to secure the safety of its passengers, and the fact that a passenger when injured was traveling on a free pass, by which he assumed all risk of accident or damage, whether occurring from negligence or otherwise, is no defense to an action to recover for the injury on the ground that it was caused by the negligence of the company or its employees.—FARMERS' LOAN & TRUST CO. V. B. & O. S. W. RY. CO., U. S. C. C., D. (Ind.), 102 Fed. Rep. 17.

18. CARRIERS — Passengers—Inspection.—A railroad company is bound to inspect its trains, but not to keep up a continuous inspection, or to know at each moment the condition of every part of a train.—PROUD V. PHILADELPHIA & R. R. CO., N. J., 46 Atl. Rep. 710.

19. CARRIERS OF PASSENGERS—Negligence.—Degree of Care.—A common carrier of passengers must use a high degree of care to protect them from dangers that foresight can anticipate. By "foresight" is meant, not foreknowledge absolute, nor that exactly such an accident as has happened was expected or apprehended, but, rather, that the characteristics of the accident are such that it can be classified among events that without due care are likely to occur, and that due care would prevent.—HANSEN V. NORTH JERSEY ST. RY. CO., N. J., 46 Atl. Rep. 718.

20. CHATTEL MORTGAGE — Description of Indebtedness.—The recital in a chattel mortgage that it is intended to secure all "indebtedness that I owe said B," the mortgagee, is a sufficient description of a debt to support the mortgage.—HOYE V. BURFORD, Ark., 57 S. W. Rep. 795.

21. CONTRACTS—Parties.—A person employed by an ice dealer to deliver ice to certain of his customers, under an agreement that he shall receive half the profits as compensation, and who does not own any of the property used, is not a proper party to an action on a contract made by the employer for the purchase of ice, as such person is not a partner.—STONE V. WEST JERSEY ICE MFG. CO., N. J., 46 Atl. Rep. 696.

22. CORPORATIONS—Contract—Validity.—One claiming under a contract of a corporation, executed without its corporate seal by its president and secretary, must show that they were clothed with general or special authority to make it, or had powers from which such authority might be inferred, or that their act was ratified by the board of directors.—FONTANA V. PACIFIC CAN CO., Cal., 61 Pac. Rep. 590.

23. COUNTIES—Supervisors — Allowance of Claims.—The county board of supervisors, being authorized to pass on claims against the county, in doing so acts in a judicial capacity, and injunction will not lie at the instance of a taxpayer to prevent the allowance of a claim, or its payment when allowed.—MCBRIDE V. NEWLIN, Cal., 61 Pac. Rep. 577.

24. CRIMINAL EVIDENCE—Dying Declarations—Evidence in Reply—Threats.—That deceased, just after he was shot, used language indicating that he then feared that the shot would prove fatal, will not authorize the admission, as dying declarations, of statements made five to seven hours later, when he seemed to be resting perfectly easy, and did not manifest any concern about himself; nor is their admission authorized by the fact that five or six hours later he had no hope of recovery.—STATE V. JAGGERS, S. Car., 36 S. E. Rep. 434.

25. CRIMINAL EVIDENCE—Homicide—Dying Declarations.—The evidence examined, and held to be sufficient to justify verdict of murder in first degree. An ante mortem statement as to the cause of death, made by the deceased soon after receiving an injury from which he died, made when death was apparently imminent, and while the deceased believed that he was about to die, is admissible in evidence as against the defendant on the charge of murdering the deceased, although deceased had not been informed by a physician that he was about to die.—STATE V. YEE WEE, Idaho, 61 Pac. Rep. 582.

26. CRIMINAL EVIDENCE—Homicide — Quarrelsome Character of the Deceased.—Where the defendant and the deceased were engaged in a fight, and the defendant struck the fatal blow with a rock while the deceased was running away from him, the quarrelsome and vindictive character of deceased cannot be shown. —JACKSON V. COMMONWEALTH, Va., 36 S. E. Rep. 487.

27. CRIMINAL EVIDENCE—Homicide—Res Gestæ —Defendant, during a quarrel, started to attack his wife with a knife. His children then attacked him, one of them striking him with an ax. While resisting their attack, he killed his daughter. Immediately afterwards he went toward a neighbor's house, about 100 yards away and told the neighbor what had happened. Held, that such statements were admissible as *res gestæ*.—HONEYCUTT V. STATE, Tex., 57 S. W. Rep. 806.

28. CRIMINAL EVIDENCE—Manslaughter—Impression of Witness.—In a prosecution for manslaughter, where an eyewitness details all of the acts, declarations, etc., of the deceased at the time of the homicide, it is not error to refuse to permit him to state the impression made on his mind by these demonstrations.—ROBINSON V. STATE, Tex., 57 S. W. Rep. 811.

29. CRIMINAL EVIDENCE—Murder—Reputation of Defendant.—Where defendant was prosecuted for murder, evidence of his good reputation for peace and quietude was relevant.—HOUSE V. STATE, Tex., 57 S. W. Rep. 825.

30. CRIMINAL EVIDENCE—Rape—Age of Consent.—Where one is prosecuted for assault with intent to commit rape on a girl under the age of consent, evidence that he did not intend to use force, or to accomplish the act without her consent, is immaterial, as legally she cannot consent, and the law resists for her. —PEOPLE V. ROACH, Cal., 61 Pac. Rep. 574.

31. CRIMINAL LAW—Burglary—Variance.—Where the indictment alleges that the premises burglarized belonged to a certain person, and that the goods therein were his property, and the proof shows that the fee to the store burglarized was in an incorporated company, that the person named in the indictment was its president, that the business was run by him, and that he was at the time of the burglary exercising the actual care and management of such store, there is no variance.—MCANALLY V. STATE, Tex., 57 S. W. Rep. 832.

32. CRIMINAL LAW—Embezzlement—Indictment.—An indictment charging that the accused, at a certain time and place, while agent of B, a private person, did then and there unlawfully and fraudulently embezzle, misapply, and convert to his own use, without consent of said B, certain money of said B, to-wit, $35, of the value of $35, which said money came into the possession and was under the care of the accused by virtue of his agency, is good.—TEMPLETON V. STATE, Tex., 57 S. W. Rep. 831.

33. CRIMINAL LAW—Lottery — Gaming Device.—A nickel in the slot machine was so constructed that if the nickel, in falling into the machine, touched certain springs, a valve would be opened, and the machine would pay a certain amount of money in excess of the deposit. The nickel deposited would remain in the

machine, and the proportion of times when one playing the machine would win was less than the times when he would lose. Held, it was not error to charge the jury that such machine constituted a lottery.—PRENDERGAST v. STATE, Tex., 57 S. W. Rep. 850.

34. CRIMINAL LAW—Handing Letter to Juror.—In the absence of anything to show prejudice, it will not be held error that, a letter addressed to a juror having been received by the clerk during the trial, the judge, without examining it or asking counsel if there was any objection, allowed the juror to receive it.—STATE v. WINE, S. Car., 36 S. E. Rep 489.

35. CRIMINAL LAW — Homicide — Self Defense.—Defendant and deceased and others met in a saloon, and deceased was urged to set up the drinks, and was shoved around roughly, and defendant mashed his hat down on his head. The parties met several times the next day, and at each meeting deceased protested about the treatment he had received the day before, and defendant each time apologized. At the last meeting deceased approached defendant, who drew his pistol, and retreated, but deceased followed him, and was shot. Held, that an instruction that defendant could not justify on the ground of self-defense if he had provoked the difficulty was not justified.—GRAYSON v. STATE, Tex., 57 S. W. Rep. 808.

36. CRIMINAL LAW—Homicide—Threats.—An instruction limiting evidence of threats made by deceased, and communicated to accused, to their effect on the intent of deceased at the time of the homicide, is erroneous; the proper rule being to consider the effect of the threats on the mind of accused.—SEBASTIAN v. STATE, Tex., 57 S. W. Rep. 820.

37. CRIMINAL LAW—Indictment—Theft.—An indictment for hog theft is not fatally defective because in the concluding part charging the accused with intent to deprive the owner of the value of the hog, etc., the name of the accused is erroneously given as the owner, where the rest of the indictment sufficiently avers the elements of the offense, and the clause in question might be eliminated as surplusage.—BOLTON v. STATE, Tex., 57 S. W. Rep. 813.

38. CRIMINAL LAW—Indictment—Theft—Accessory.—In a prosecution against a person as accessory to the crime of theft of cattle, the indictment, after setting out the offense of stealing by the principal, alleged that defendant, after the theft was committed and knowing of it, in order that the principal might evade arrest, gave aid to the principal. Held, that the indictment was sufficient in merely stating that the accessory gave aid to the principal to evade an arrest, it not being necessary to set out the act or acts constituting such aid.—GANN v. STATE, Tex., 57 S. W. Rep. 887.

39. CRIMINAL LAW—Justifiable Shooting.—One who goes in search of another, believing him guilty of criminal intimacy with his wife, has no right to shoot him, though finding him holding his wife in his guilty embrace.—STATE v. CHILES, S. Car., 36 S. E. Rep. 496.

40. CRIMINAL LAW—Rape—Evidence of Conspiracy.—Where, in a prosecution for rape, there is evidence tending to show a conspiracy between defendant and other persons to commit the crime, and evidence of acts of the other alleged conspirators to carry out their purpose in the absence of defendant, the jury should be instructed to disregard such testimony, if a conspiracy is not shown.—SEGREST v. STATE, Tex., 57 S. W. Rep. 845.

41. CRIMINAL LAW—Swindling.—Defendant, charged with obtaining money under false pretense, wrote from Cherokee county to the person swindled, in Houston county, to send him $500. The latter notified a bank in Cherokee county that he would honor defendant's draft for that amount. Defendant drew a draft, with exchange, and when it was presented the bank placed the money to his credit. Held, that the offense was consummated in Cherokee county, and the venue was improperly laid in Houston county.—DECHARD v. STATE, Tex., 57 S. W. Rep. 813.

42. CRIMINAL LAW—Trial by Jury of Eight.—Prosecution by information instead of by indictment and trial of a felony, less than murder, by a jury of eight men, if otherwise properly conducted, is legal under the constitution and laws of this State.—STATE v. IMLAY, Utah, 61 Pac. Rep. 557.

43. CRIMINAL LIBEL — Indictment—Variance.—Under an indictment for unlawful cohabitation with a woman named "May Hite," proof that defendant cohabited with a woman named "May Hyde" is such a variance between the indictment and proof as will entitle defendant to an acquittal.—STATE v. WILLIAMS, Ark., 57 S. W. Rep. 792.

44. DEED—Consideration—Recital.—While the recital of consideration in a deed is *prima facie* evidence of the amount thereof, it is not conclusive, and a different consideration or amount may be shown by extraneous evidence.—MILLER v. LIVINGSTON, Utah, 61 Pac. Rep. 569.

45. DEEDS—Delivery.—Delivery of a deed by the grantor to an attesting witness for probate and record constitutes a sufficient delivery thereof, though made in the absence of the grantee and without his knowledge.—TENNESSEE COAL, IRON & RAILROAD CO. v. WHEELER, Ala., 28 South. Rep. 38.

46. DEEDS—Intention—Estates.—Where a deed was to a daughter and the heirs of her body, in consideration of the grantor's love to the daughter, and the heirs, though living, were not named in the deed, but the grantor was to retain possession during his life, when the property was to be controlled by the daughter, or, if she was deceased, by the guardian of the heirs, a fee was conveyed to the daughter; and a clause which attempted to restrict alienation by her was a nullity.—WHITE v. DEDMON, Tex., 57 S. W. Rep. 870.

47. EJECTMENT—Defenses—Sheriff's Deed.—A sheriff's deed of conveyance, duly acknowledged and proved, is by statute *prima facie* evidence of the truth of the recitals contained therein; but the truth of such recitals can be attacked by the defendants in possession, under a plea of general issue, in an action of ejectment by the purchaser at sheriff's sale against such defendants.—MEYERS v. CONOVER, N. J., 46 Atl. Rep. 709.

48. EQUITY—Relief from Judgment.—Equity will not grant a new trial in a case which has proceeded to judgment in a court of law, when the petition therefor shows that the plaintiff was negligent in making his defense in the court where the judgment was rendered.—BERRY v. BURGHARD, Ga., 36 S. E. Rep. 459.

49. EQUITY—Supplying Acknowledgment to Conveyance.—A bill for relief, because a conveyance given complainant by defendant was not acknowledged, and defendant refuses to acknowledge it, cannot be maintained, as there being a subscribing witness, and no allegation that proof of execution cannot be made by him, complainant may have adequate remedy without the suit.—VELIE v. BREEN, Miss., 28 South. Rep. 25.

50. EVIDENCE—Abandoned Pleading.—An allegation in a party's abandoned pleading is admissible to prove a material fact, when offered by his adversary.—SOUTHERN PAC. CO. v. WELLINGTON, Tex., 57 S. W. Rep. 856.

51. EVIDENCE—Parol Evidence—Varying Contract.—Parol evidence is not admissible to control the statements of a written contract (notes and trust deed securing them) as to the amount that would be due thereunder.—O'NEAL v. MCLEOD, Miss., 28 South. Rep. 28.

52. EVIDENCE—Private Memoranda.—A memorandum made by a corporation's agent of the time an employee worked for it, and the compensation he was to receive, is not admissible in evidence without showing that the agent's memory was faulty respecting such statement, or that he knew it was true when he made it.—SUSEWIND v. LEVER, Oreg., 61 Pac. Rep. 644.

53. EXECUTION SALES—Redemption—Bankruptcy of Debtor.—Where a creditor, holding a judgment which constituted a valid legal lien on real estate of his debtor, caused the same to be sold on execution and bid in the property, and, pending the period allowed by the State law for redemption, the debtor was adjudged bankrupt, but his trustee was not appointed until after the expiration of such period, and thereafter the sheriff made a deed of the property in question to the purchaser, held that the time for redemption was not enlarged by the intervening bankruptcy proceedings, and that the purchaser's title under the sheriff's deed was valid as against the trustee in bankruptcy. Stay of proceedings continued sufficient to give trustee opportunity to bring plenary suit to set aside fraudulent conveyance.—IN RE GOLDMAN, U. S. D. C., S. D. (N. Y.), 102 Fed. Rep. 122.

54. FEDERAL COURTS — Conflict of Jurisdiction—Injunction—Interference with Proceedings in State Court—Constitutional Law.—An action having been brought for the recovery of a back assessment, and the taxpayer having appeared therein, he commenced an action in a federal court to enjoin the treasurer from proceeding in said action in the State court, on the ground that the statutes under which he acted were in conflict with the fourteenth amendment to the United States constitution, providing that "no State shall deprive any person of life, liberty, or property without due process of law." Held, that the bill must be dismissed, since the exercise of such power is expressly forbidden by Rev. St. U. S.—AULTMAN & TAYLOR CO. v. BRUMFIELD, U. S. C. C., N. D. (Ohio), 102 Fed. Rep. 7.

55. FEDERAL COURTS—Criminal Law—Conspiracy Accompanied by Murder.—A sentence to imprisonment for life for conspiracy accompanied with murder, in violation of U. S. Rev. St. §§ 5508, 5509, providing for such punishment as the laws of the State in which the offense is committed may impose, it is not in excess of the authority of a circuit court of the United States, although the verdict of the jury has not indicated the punishment as required by the State statutes in case of murder, since the act of congress of January 15, 1897, ch. 29, abolishes the death penalty in such cases, and provides for a sentence to imprisonment for life.—COLUMBUS WISCHESTER MOTES v. UNITED STATES, U. S. S. C., 20 Sup. Ct. Rep. 993.

56. GUARANTY — Continuing Guarantee — Parol Evidence.—In an action on a continuing guaranty, evidence as to an understanding between the parties that it was not continuous is inadmissible as varying the written contract.—SCHNEIDER-DAVIS CO. v. HART, Tex., 57 S. W. Rep. 903.

57. HOMESTEAD—Deed—Husband and Wife.—Under Code, § 3634, providing that real estate set apart as a homestead shall not be aliened by the householder, if a married man, except by the joint deed of himself and wife, a deed of the homestead by the husband alone is void, and conveys nothing to the grantee.—VIRGINIA & TENNESSEE COAL & IRON CO. v. MCCLELLAND, Va., 36 S. E. Rep. 479.

58. HOMESTEAD — Mortgages — Abandonment. — A mortgage void because given on a business homestead is not validated by a subsequent abandonment of the property as a homestead.—WOELTZ v. WOELTZ, Tex., 57 S. W. Rep. 905.

59. INSURANCE — Condition Precedent—Annuity.—A life insurance policy which stipulates for the payment of an annual premium by the assured, with a condition to be void in case of non-payment, is not an insurance from year to year, but the premium constitutes an annuity, the whole of which is the consideration for the entire assurance for life; the condition is a condition subsequent, making the policy void by non performance, and the acceptance of a note for the annual premium is a waiver of the payment of the premium, and brings into operation the conditions in the policy referring to the note.—THUM v. WOLSTENHOLME, Utah, 61 Pac. Rep. 537.

60. INSURANCE—Agreement to Procure.—A declaration alleging an agreement by insurance agents to procure insurance, and procurement of insurance invalidated by a requirement of ownership of the ground on which the property insured was located, and acceptance thereof and payment of the premium thereon, induced by false representations of the agents that they had notified the insurer that the insured did not own such ground, and that the policy was full protection and insurance, is insufficient as the basis of an action against the agents on contract, since such allegations are not adapted to an action on contract, and show no consideration to the agents or irresponsibility of the principal, but state a tort.—MARTIN v. HOLMAN, N. J., 46 Atl. Rep. 723.

61. INSURANCE—Ownership of Property—Avoidance of Policy.—When applicants for insurance informed the company's agent that they did not own part of the property, but held it on commission under an agreement of agency, and the agent made out the policy in their name, designating them as owners, a stipulation that the policy would be void if the interest of insured was not truly stated therein was waived.—WESTCHESTER FIRE INS. CO. v. WAGNER, Tex., 57 S. W. Rep. 876.

62. JUDGMENTS—Collateral Attack.—Where the record in a cause removed from a State court to the federal court fails to show the facts on which the jurisdiction rests—as that plaintiff and defendant are citizens of different States—the judgment therein cannot for such reason be collaterally attacked by one who is a party to the suit, though it may be reversed upon a direct proceeding for that purpose.—HAUG v. GREAT NORTHERN RY. CO., U. S. C. C. of App., Eighth Circuit, 102 Fed. Rep. 74.

63. MASTER AND SERVANT—Rules—Contributory Negligence.—A railroad employee is not bound by the terms of a printed rule not requiring lookouts on trains backing in the yards, where it is shown that the officers of the road required lookouts to be stationed on such trains in the yards, and such had long been the rule and practice in and about the yards.—GALVESTON, H. & S. A. RY. CO. v. COLLINS, Tex., 57 S. W. Rep. 884.

64. MUNICIPAL CORPORATIONS—Charter—Annexation of Territory.—Where a valid ordinance, having the effect to annex territory to the city, was passed, the fact that a subsequent ordinance proposing the annexation of the same territory was prohibited of final passage by a petition filed in the circuit court, as provided by statute, and that the final adoption of still another ordinance to the same effect is yet in question in another suit, does not affect the validity of the first ordinance; nor does the attempt to pass the additional ordinances operate as an abandonment of the territory annexed.—BYBEE v. SMITH, Ky., 57 S. W. Rep. 789.

65. NEGLIGENCE—Contributory Negligence.—Where a person permits a team to stand upon a public highway in close proximity to a railroad track, or is about to cross such track, he is bound to look and listen, in order to avoid an approaching train, and the happening of an accident.—SILCOCK v. RIO GRANDE W. RY. CO., Utah, 61 Pac. Rep. 565.

66. NEGLIGENCE—Exemplary Damages.—Under Code Ala. 1896, § 27, derived from an act entitled, "An act to prevent homicides," and providing that, in an action by a personal representative for negligently causing the death of his intestate, plaintiff may recover "such damages as the jury may assess," the damages recoverable by plaintiff in an action against a railroad company for causing the death of a passenger on one of its trains, by the falling of a bridge, are punitive and exemplary.—LOUISVILLE & N. R. CO. v. LANSFORD, U. S. C. C. of App., Fifth Circuit, 102 Fed. Rep. 62.

67. NEGLIGENCE—Street Railroads—Evidence.—In an action for damages for a personal injury received by plaintiff by reason of his horse becoming frightened at defendant's street cars, which were negligently allowed to stand on a bridge on a public highway, evi-

dence that other horses had become frightened at defendant's cars standing at the same place where plaintiff's horse took fright is competent.—SAN ANTONIO EDISON CO. v. BEYER, Tex., 57 S. W. Rep. 851.

68. PARTNERSHIP—Death of Partner — Possession of Firm Real Estate.—On the death of a partner, the right to possession of real estate owned by the firm vests in the survivor, and, on his death before the settlement of the partnership business, in his legal representatives; and until the business of the partnership has been settled up, and its debts paid, an administrator of the partner first deceased cannot maintain an action to recover possession of any portion of such real estate.—CHURCHILL v. BUCK, U. S. C. C. of App., Eighth Circuit, 102 Fed. Rep. 38.

69. PARTNERSHIP — Debt Due Firm—Accounting.—Where an insolvent partner credited his wife on the partnership books with an amount she owed the firm for provisions furnished for use in her boarding house, she was a proper party defendant to a suit brought by another partner against her husband, after dissolution, to compel an accounting of the partnership business, and to cancel the credit given her and re-establish her indebtedness to the firm, and her joinder was not subject to an objection of multifariousness.—SCHLICHER v. VOGEL, N. J., 46 Atl. Rep. 726.

70. PARTNERSHIP — Judgments — Payment by One Partner.—Where one partner has paid judgments against the partnership, he is not entitled to subrogation to the security of the judgment, in the absence of an agreement of the partners creating the relation of principal and surety between them, since the partners are equally liable for partnership debts.—SANDS' ADMR. v. DURHAM, Va., 36 S. E. Rep. 472.

71. PLEADING—Amendment—New Cause of Action.—Where the cause of action originally declared on was for damages to a shipment of sugar while in transit on defendant's railroad line, a supplemental petition alleging that injury was not caused as set forth in the former pleading, but was caused by neglect of defendant's servants in failing to load undamaged sugar from a cargo landed from a ship consigned to plaintiff as directed, is not an amendment of the original pleading, but presents a new cause of action.—MISSOURI, K. & T. RY. CO. OF TEXAS v. LEVY, Tex., 57 S. W. Rep. 866.

72. PLEADING—Fraud.—A defense of fraud and misrepresentation should allege knowledge on the part of plaintiff.—GEM CHEMICAL CO. v. YOUNGBLOOD, S. Car., 36 S. E. Rep. 487.

73. PLEDGES — Priority of Equities.—Where the pledgee of an entire issue of bonds took the last ten of the bonds to secure a loan made at the time, with notice that plaintiff was entitled by contract with the pledgors to the proceeds of five of the bonds, the plaintiff has the prior equity as to five of the bonds, though the pledge was made pursuant to an agreement, entered into prior to such notice, to advance money as needed, and pledge the bonds to secure the loan; and it was proper for the chancellor, having the whole matter before him, to adjudge the bonds to plaintiff, with their interest, instead of the proceeds.—COLUMBIA FINANCE & TRUST CO. v. MERCER, Ky., 57 S. W. Rep. 737.

74. PRINCIPAL AND AGENT—Acts of Agent Binding on Principal.—Where a duly-appointed agent of an insurance company employed a clerk, who was habitually permitted by the agent to solicit insurance, collect premiums, and deliver policies, such clerk, in these matters, was thus made by the agent so far the representative of the company that his delivery of a policy in the regular course of business had the same effect to bind the company as if it had been delivered by the agent himself.—HANOVER FIRE INS. CO. v. BRADFORD, U. S. C. C., W. D. (Penn.), 102 Fed. Rep. 45.

75. PRINCIPAL AND AGENT—Collection—Payment to Agent.—Agency to sell does not necessarily carry with it authority to collect.—WALTON GUANO CO. v. MCCALL, Ga., 36 S. E. Rep. 469.

76. PRINCIPAL AND AGENT—Contract of Employment—Commissions.—Under a contract appointing an agent to solicit applications for shares in a corporation, within stated territory, and to collect the monthly dues thereon, for the period of three years, for which service the agent is to receive 80 per cent. of the first month's dues collected, and 5 per cent. of the succeeding month's "dues collected," he cannot recover the stipulated commissions on dues which he might have collected if the contract had been continued after the three years, where there is no claim that the contract has been renewed, or that the agent is entitled to have it renewed, or that he has been illegally discharged, or any other breach committed by the corporation.—CRUM v. MURRAY, U. S. C. C. of App., Eighth Circuit, 102 Fed. Rep. 92.

77. PRINCIPAL AND AGENT — Liability of Principal for Torts of Agent.—A principal, authorized to countersign and issue policies of an insurance company, cannot be held responsible for the act of his agent in forging his signature to a policy, and delivering the same without his consent, ratification, or knowledge, unless upon some ground of estoppel.—BRADFORD v. HANOVER FIRE INS. CO. OF CITY OF NEW YORK, U. S. C. C. of App., Third Circuit, 102 Fed. Rep. 48.

78. RAILROAD COMPANY—Fires—Negligence.—Where there was evidence that the fire which destroyed plaintiff's property was set by sparks from defendant's engine, an instruction that it must be found "that the escape of sparks was the result of negligence on the part of defendant in respect to the appliances used to prevent the escape of sparks" was erroneous, as excluding the right to recover because of negligence of defendant's servants in handling the engine.—SCOTT v. TEXAS & P. RY. CO., Tex., 57 S. W. Rep. 801.

79. RAILROAD COMPANY — Street Railroads—Injury to Child on Track.—The rule of duty which requires the ordinary traveler in crossing a street railway to use his powers of observation to discover approaching vehicles, and his judgment how and when to cross without collision, is also binding upon a child who is *sui juris*.—FITZHENRY v. CONSOL. TRACTION CO., N. J., 46 Atl. Rep. 698.

80. RAILROAD COMPANY — Street Railroads — Negligence—Violation of Ordinances.—The violation of a city ordinance, requiring a motorman to keep a vigilant watch for persons on or moving toward the track, and on the first appearance of danger to stop the car in the shortest time possible, and prescribing a penalty for failure to comply therewith, will not authorize a recovery against the company for causing the death of a person on the track, without proof that such company had agreed to or contracted to be bound by such ordinance, since the city cannot by ordinance create a right of action between third persons, nor enlarge the common-law liability of citizens between themselves.—HOLWERSON v. ST. LOUIS & S. RY. CO., Mo., 57 S. W. Rep. 770.

81. REMOVAL OF CAUSES — Jurisdiction Acquired by Federal Court.—An action in a State court against a railroad company to recover overcharges alleged to have been exacted from plaintiff in violation of the interstate commerce act is one in which the State court is without jurisdiction of the subject-matter, and a federal court cannot, therefore, acquire jurisdiction by removal.—AURACHER v. OMAHA & ST. L. RY. CO., U. S. C. C., S. D. (Iowa), 102 Fed. Rep. 1.

82. REPLEVIN — Evidence — Mortgage.—In replevin against one claiming the property by virtue of a chattel mortgage filed in a county other than that in which plaintiff lives, a certified copy of the mortgage is admissible in evidence without showing that it had been recorded in the county in which it had been filed, where the defendant also relied for his right of possession on another mortgage, recorded in the county of plaintiff's residence.—PARKHURST v. SHARP, Kan., 61 Pac. Rep. 531.

83. SET-OFF.—A set-off is a cause of action arising upon contract or ascertained by the decision of a court, and can only be pleaded in an action founded on contract. It must be independent of, and not connected with, the contract made the foundation of the cause of action in the petition; and can only be pleaded where there is mutuality of parties. The cause of action sought to be pleaded as a set-off must exist in favor of all the defendants against the plaintiff.—RICHARDSON V. PENNY, Okla., 61 Pac. Rep. 584.

84. STATUTORY CONSTRUCTION—Legislative Intent.—Where the language of a particular provision of a statute is ambiguous, construction may be resorted to in order, if possible, to ascertain the true intention of the legislature; but, where there is no ambiguity, the language must be taken as the expression of the legislature's intention, unless other provisions of the statute clearly show that the language was used in a sense different from its natural and ordinary meaning.—MILES V. WELLS, Utah, 61 Pac. Rep. 534.

85. TAXATION — Exemption of Original Imported Packages.—Original packages of imported goods, which cannot be assessed for local taxation, consist of the boxes, cases, or bales in which the goods were shipped, and not the smaller packages therein contained, although these are the packages in which the goods are put up by the manufacturer; and when the packages in which the goods are shipped reach their destination for use or trade, and are opened and the separate packages therein exposed or offered for sale, these become subject to local taxation like other property in the State.—F. MAY & CO. V. CITY OF NEW ORLEANS, U. S. S. C., 20 Sup. Ct. Rep. 976.

86. TAXATION—Paying Another's Taxes.—Where a county treasurer, without any previous request or subsequent promise of indemnity, voluntarily paid taxes on the land of another, he was not entitled to be subrogated to the rights of the State and county.—REPASS V. MOORE, Va., 36 S. E. Rep. 474.

87. TAX SALE—Notice.—Under Mansf. Dig. § 5762, requiring the list of lands delinquent for non-payment of taxes to be published for a certain time between certain dates, with a notice of intent to sell them, and section 5763, requiring the clerk of the county court to record the list and notice of sale in his office before the sale, with a certificate as to the publication, the sale is void, in the absence of such record before the sale.—LOGAN V. EASTERN ARKANSAS LAND CO., Ark., 57 S. W. Rep. 798.

88. TRADE-MARK — Unfair Competition — Unlawful Imitation.—Where there are strong resemblances between the name or dress of the goods of defendant and complainant, for which no sufficient reason appears, the inference is that they exist for the purpose of misleading; and where they are of such a character as to deceive ordinary purchasers, in the exercise of ordinary care, they are sufficient to establish unfair competition. The fact that the dissimilarities are such that, if called to the attention of a purchaser, or if he were given an opportunity for comparison, he would not be deceived, is not a defense.—PARIS MEDICINE CO. V. W. H. HILL CO., U. S. C. C. of App., Sixth Circuit, 102 Fed. Rep. 148.

89. TRIAL—Motion for Nonsuit.—A party moving for a nonsuit must, in his motion, specify particularly the points relied on for such nonsuit, and thereby call the attention of the court and the opposite party to the points of his objections.—WHITE V. RIO GRANDE W. RY. CO., Utah, 61 Pac. Rep. 568.

90. TRIAL — Separation of Witnesses—Rights of Parties.—A party to an action cannot be placed under the rule for the separation of witnesses, nor can the court prevent a party from taking the stand after he has heard the testimony of two of his own witnesses.—COLBERT V. GARRETT, Tex., 57 S. W. Rep. 854.

91. TRUSTS—Evidence to Establish.—B, the president of a national bank, made a loan for his personal use to be invested, as the lender understood, in a purely personal transaction of B. Held, that the fact that the money so borrowed by B was or might have been mingled with the money of the bank created no liability on the part of the bank as trustee.—NETHERLANDS AMER. MORTG. BANK V. CONNOWAY, Idaho, 61 Pac. Rep. 590.

92. TRUSTS — Jurisdiction in Equity.—Although the court of chancery does not possess the power to remove an executor from office or to devolve his duties as executor upon a receiver, yet, when the duties of an executor are intermingled with and inseparable from his duties as a trustee, the jurisdiction of a court of equity over trusts and trustees will extend, in a proper case, to restraining the person who is trustee from performing his functions as trustee, notwithstanding the fact that such restraint will incidentally prevent his performance of his functions as executor.—BENTLEY V. DIXON, N. J., 46 Atl. Rep. 690.

93. VENDOR AND PURCHASER—Knowledge of Agent.—Knowledge of one, who buys land for his wife, of an outstanding equity, does not bind her, being acquired long before he became her agent.—PEARCE V. SMITH Ala., 28 South. Rep. 37.

94. VENDOR AND PURCHASER—Misrepresentations.—Where a sale of land is based on a mutual mistake as to the quantity of land in the tract, the purchaser may be relieved in equity, although the sale was in gross, and there was no covenant of warranty as to quantity.—WUEST V. MOKHRIG, Tex., 57 S. W. Rep. 866.

95. VENDOR AND PURCHASER—Vendor's Lien—Limitations.—Though an assignee of a vendor's lien note which is barred by limitations cannot defeat the plea of limitations in an action against the maker on the note alone, the original vendor may assign his superior legal title to the holder of the note, who, as assignee of the note and legal title, may recover the land in like manner, as the vendor could if he had retained the note.—JACKSON V. BRADSHAW, Tex., 57 S. W. Rep. 878.

96. WAR REVENUE ACT—Stamp Taxes—Notary's Bond.—War Revenue Act June 13, 1898, declares that bonds for indemnifying any person, etc., as surety for the payment of money or the execution of official duties, and all other bonds, except such as are required in legal proceedings, shall pay a tax of 50 cents; and section provides that it is the intent of the act to exempt from the stamp taxes State, county, town, and other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental taxing, or municipal capacity. Held, that a notary public appointed by a State is a State officer employed in the exercise of functions belonging to it in its governmental capacity, and hence the bond required of such notary as part of his qualification for office is not subject to the revenue tax.—WARWICK V. BETTMAN, U. S. C. C., S. D. (Ohio), 102 Fed. Rep. 127.

97. WILLS—Devise of Community Property.—A will which describes the principal part of the estate of the testatrix to be the community property of herself and husband, and then devises and bequeathes all of her estate to her husband and minor child to share and share alike, gives to the child but one-half of the share of the testatrix in the community property, and of such other property as she owned in her own right.—SUTTON V. HARVEY, Tex., 57 S. W. Rep. 879.

98. WITNESSES — Claim against Decedent.—Code, § 1740, providing that a person shall not testify as a witness to establish his own claim or defense against the estate of a deceased person which originated during the lifetime of such deceased person, does not prohibit an administrator from testifying in favor of the estate of which he is administrator, in proceedings to prove a claim against the estate of another which accrued during the lifetime of the latter, though he be a distributee of the estate of which he is administrator.—COCK V. ABERNATHY, Miss., 28 South. Rep. 18.